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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/752,134

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05/01/2006

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EXAMINER

SCHUBERT, KEVIN R

ART UNIT

PAPER NUMBER

2137

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/752,134

Applicant(s)

NEIGER ET AL.

Examiner

Kevin Schubert

Art Unit

2137

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

Claim 9 has been considered. Examiner maintains the rejection presented in the previous action.

***Claim Rejections - 35 USC § 102***

5           The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

10           (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15           Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Robinson, U.S. Patent No. 5,522,075.

As per claim 9, the applicant describes a method comprising the following limitations which are met by Robinson:

a) running guest software in a processor mode that enables the guest software to operate at a privilege level intended by the guest software (Col 14, lines 12-15);

20           b) identifying an attempt of the guest software to perform an operation restricted by said processor mode (Col 12, lines 50-53);

c) determining whether the attempt of the guest software would succeed if the guest software was running outside said processor mode (Col 12, lines 20-53);

25           d) allowing the guest software to attempt the operation if the attempt of the guest software would not succeed if the guest software was running outside said processor mode (Col 12, lines 20-53);

e) exiting said processor mode to transfer control over the operation to a virtual machine monitor running outside said processor mode if the attempt of the guest software would succeed if the guest software was running outside said processor mode (Col 12, lines 50-60).

**Response to Arguments**

Applicant's arguments, filed 4/17/06, with respect to the 102(b) rejection of claim 9 under Robinson have been fully considered, but they are not persuasive. Applicant presents the following argument:

5           1) Part d) of claim 9 is not met

Examiner respectfully disagrees. Claim 9 describes a method of running guest software. Part d recites the following: "allowing guest software to attempt the operation *if the attempt of the guest software would not succeed if the guest software was running outside said processor mode*". Thus, part d only  
10 requires an action to be taken (i.e. allowing guest software to attempt the operation) if a certain condition happens to take place (i.e. a negative determination of the guest software attempt succeeding in performing a restricted operation). If the certain condition does not take place, the action need not take place.

In the previous Advisory Action (mailed 11/15/05), Examiner has cited that Robinson teaches a  
15 method that may occur without the certain condition happening to take place. As such, the action need not take place. Examiner cites the following passage from the Advisory Action:

"Robinson discloses a system which includes running guest software in a processor mode that enables the guest software to operate at a privilege level intended by the guest software (part a).  
20 Robinson also discloses that the system monitors for "sensitive instructions" which are instructions that, if allowed to execute, would affect all other VMs and the VMM (Col 8, line 65 to Col 9, line 14). Since these "sensitive instructions" would succeed in performing a restricted operation if allowed to execute, Robinson teaches that the system monitors for "sensitive instructions" in an effort to identify an attempt of the guest software to perform an operation restricted by the processor mode (part b). As noted in the previous  
25 action, in order to monitor for "sensitive instructions", the monitoring means analyzes an instruction to determine if the instruction is a "sensitive instruction". When an instruction attempts to execute, the monitoring means may make a determination that the instruction attempting to execute is a "sensitive instruction" and thereby determine that an attempt of the guest software would succeed in performing a restricted action if the guest software was running outside said processor mode (part c). Because the  
30 guest software is running in the processor mode, there is a means to inhibit the guest software from succeeding in performing the restricted action. If the determination is made that an instruction is a "sensitive instruction", the processor mode is exited and control over the operation is transferred to a virtual machine monitor running outside the processor mode (Col 12, lines 50-60) (part d)".

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Thus, as exhibited in the passage above, Robinson discloses a method of running guest software in which a "sensitive instruction" associated with a restricted operation is identified (part b), a determination is made that the attempt of the guest software would succeed if the guest software was running outside said processor mode (part c), and the processor mode is exited to transfer control over to a VMM (part e). Since it is not determined that the guest software would not succeed if the guest software was running outside the processor mode, the step of allowing the guest software to attempt the operation need not requisitely be shown.

Accordingly, the method of claim 9 is met by Robinson.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Schubert whose telephone number is (571) 272-4239. The examiner can normally be reached on M-F 7:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should  
5 you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KS

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EMMANUEL L. MOISE  
SUPERVISORY PATENT EXAMINER